

Internal Revenue Service

Number: **201421012**

Release Date: 5/23/2014

Index Number: 9100.22-00, 382.12-16

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:4

PLR-139842-13

Date:

February 05, 2014

Legend

Parent =

Sub 1 =

Sub 2 =

Foreign Sub 1 =

Foreign Sub 2 =

Foreign Sub 3 =

Date 1 =

Date 2 =

%a =

%b =

%c =

%d =

%e =

%f =

Parent Official =

Tax =
Professional

Dear :

This letter responds to a letter dated September 12, 2013, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested in order to allow Parent and Foreign Sub 3 to file an extension to restore %a of Foreign Sub 3's value to Foreign Sub 1 and %b of Foreign Sub 3's value to Foreign Sub 2, and for Foreign Sub 1 and Foreign Sub 2 to then restore all of their value to Parent under § 1.382-8(h) of the Income Tax Regulations (hereinafter referred to as the "Elections"). Additional information was received in subsequent correspondences dated December 27, 2013, January 9, 2014, and January 29, 2014. The material information is summarized below. Citations to regulations are to regulations in effect for the taxable year ended Date 2.

In the tax year ending Date 2, Parent was the common parent of a consolidated group of which Sub 1 and Sub 2 were members (the "Parent consolidated group"). The members of the Parent consolidated group were also component members of a controlled group within the meaning of § 1.382-8(e). The controlled group also included Foreign Sub 1, Foreign Sub 2, and Foreign Sub 3. Neither Foreign Sub 1, Foreign Sub 2, nor Foreign Sub 3 was engaged in the conduct of a U.S. trade of business.

Parent directly owned 100% of Sub 1, Sub 2, and Foreign Sub 1. Foreign Sub 2 was directly owned %d by Parent and %e by Sub 1. Foreign Sub 3 was directly owned %a by Foreign Sub 1, %b by Foreign Sub 2, and %f by unrelated third parties. Accordingly, Parent, through its ownership of Sub 1, Foreign Sub 1 and Foreign Sub 2, owned a total %c interest in Foreign Sub 3.

On Date 1, Parent underwent an ownership change. As a result, Parent's value was reduced under § 1.382-8(c)(1) by the value of the stock it owned in Foreign Sub 1 and Foreign Sub 2, and Foreign Sub 1 and Foreign Sub 2's value was reduced by the value of the stock they owned in Foreign Sub 3.

Section 382(a) of the Internal Revenue Code (the “Code”) provides that the amount of the taxable income of any new loss corporation for any post-change year which may be offset by pre-change losses shall not exceed the § 382 limitation for such year. Under § 382(b)(1), the § 382 limitation is determined by multiplying the value of the old loss corporation by the applicable long term tax-exempt rate.

A special rule designed to prevent “double counting” by controlled groups is set forth in § 1.382-8. Section 1.382-8(c)(1) requires the value of the stock of each component member of the controlled group be reduced by the value of the stock owned by that component member in any other component member. For purposes of applying § 1.382-8, a consolidated group, loss group, or loss subgroup, is treated as a single corporation under § 1.382-8(f). Component members of a controlled group can elect under § 1.382-8(c)(2) to restore some or all of the value to the member whose value is reduced under § 1.382-8(c)(1). The election to restore value is made following the procedures set forth in § 1.382-8(h).

The Elections were required to be filed with Parent’s income tax return for its taxable year ended Date 2. However, for various reasons, Parent and Foreign Sub 1, Foreign Sub 2, and Foreign Sub 3 failed to make the Elections in a timely manner. Parent has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 of the Code at the time it requested relief.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e. § 1.382-8(h)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent, Foreign Sub 1, Foreign Sub 2, and Foreign Sub 3 to file Elections, provided they show that they acted reasonably and in good faith, the

requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the government.

Information, affidavits, and representations submitted by Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the Elections. The information establishes that the request for relief was filed before the failure to make the Elections was discovered by the Internal Revenue Service. See § 301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the affidavits submitted and the representations made, we conclude that Parent, Foreign Sub 1, Foreign Sub 2, and Foreign Sub 3 have shown they acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-3 until 60 days from the date on this letter for Parent, Foreign Sub 1, Foreign Sub 2, and Foreign Sub 3 to file the Elections, as follows: Foreign Sub 3 will restore %a of its value to Foreign Sub 1, and %b of its value to Foreign Sub 2. Foreign Sub 1 will restore all of its value to Parent, and Foreign Sub 2 will restore all of its value to Parent.

The above extension of time is conditioned on the taxpayers' (Parent's and the members of its controlled group) tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely made (taking into account the time value of money).

No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the Federal income tax returns involved.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, we express no opinion with respect to whether an ownership change occurred; whether Parent, Foreign Sub 1, Foreign Sub 2, and Foreign Sub 3 are component members of a controlled group; or the amount of value, if any, that may be restored. Further, we express no opinion as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the return or the Election late that are not specifically set forth in the above ruling.

For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made by Parent, Company Official, and Tax Professional under penalties of perjury. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-3 to file the Elections, any penalties and interest that would otherwise be applicable still apply.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)